MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6291 OF 2006

M/s. REEBOK INDIA CO. & ANR. .. PETITIONERS

Vs.

UNION OF INDIA & ORS. .. RESPONDENTS

Mr. A. A. Siddiqui for petitioners
Mr. Girish Kulkarni with Ms. Anamica Malhotra for R-1 & 2
Smt. S. S. Bhende, AGP

CORAM: SMT. RANJANA DESAI &
SMT. R. S. DALVI,JJ.

DATE: DECEMBER 4, 2007.

P.C.

. Petitioner 1 company is doing business of import, marketing, sale and supply of sports goods, footwear, apparels etc. The petitioners are aggrieved by the action taken against them by the respondents under the Standard of Weights and Measures Act, 1976 and the Rules made thereunder ("the said Act and the said Rules" respectively for convenience).

2. The case of the petitioners as stated in the petition inter alia is that on 26/7/06, respondent 4 inspected it’s premises at Thane; seized certain goods and issued two receipts. On 4/9/06

respondent 4 inspected the petitioners' premises at Vashi, seized certain goods and issued a receipt. On 19/8/06, respondent 4 visited the petitioners' premises at Goregaon and seized certain goods and issued Proforma A notice to them. The receipts and the proforma notice are annexed to the petition. These documents inter alia state that from some packages stickers were found removed. Price was found smugged and scratched on some packages. Original price was found altered and changed in respect of 35 packages. On some packages declaration to the effect "inclusive of all taxes" was not made and on some packages name and address of the importer was not mentioned. These receipts/ notices state that prima facie the petitioners have contravened Section 39 read with Section 63 of the said Act read with Rules 2(r), 23(6), 23(7) and 23(1) of the said Rules. The petitioners have prayed for quashing of the said notices/receipts.

3. On 5/10/06 notice before admission was issued by this court. On the petitioners furnishing security bond for the value of the goods, respondent 2 was directed to release the petitioners' goods. Respondent 2 was permitted to keep one sample of each item of the goods which

were seized. Proceedings were directed to go on but the court directed that no final order shall be passed till further orders.

4. We have heard learned counsel for the petitioners and learned counsel for the respondents. Learned counsel for the petitioners heavily relied on the amendment made to the Package Commodities Rules vide GSR 425(E) dated 17/7/2006. A copy of the same is tendered by him in this court. He submittted that in view of the amendment the respondents cannot now pursue the proceedings. He submitted that in any event the petitioners' goods are not covered by the provisions of the said Act and the said Rules.

5. Notice dated 3/8/06 and notice dated 29/8/06 inform the petitioners that the contravention alleged by the respondents is compoundable under Section 73 and Section 65 of the said Act. Notices call upon the petitioners to intimate their say to the Inspector of Legal Metrology alongwith documentary evidence, if any, and further state that, if reply is not received further steps will be taken against the petitioners.

6. In our opinion, if the contravention alleged is compoundable, the petitioners ought to have submitted their reply. In the reply they can raise all contentions which they have raised in this petition. It is not possible for us to entertain a petition challenging show cause notices. Learned counsel for the petitioners submits that appropriate reply will be filed by the petitioners. In the circumstances, in our opinion, following order will meet the ends of justice.

. "If the petitioners file a reply to the notices issued to them within six weeks from today, the 2nd respondent shall consider it independently and in accordance with law within eight weeks from the receipt thereof. He shall communicate his decision to the petitioners.

. The interim order passed by this court on 5/10/06 shall continue to operate till such time as the decision of the 2nd respondent is communicated to the petitioners and, if the decision is adverse to the petitioners, it shall continue to operate for a period of two weeks from the date of receipt thereof by the petitioners.

. All contentions of both sides are kept open.

. Petition is disposed of.

JUDGE

JUDGE